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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/726,839 | 12/02/2003 | Matthew Gelfand | 36314-00500 | 5552 |
| 27171 | 7590 | 11/14/2005 | | |
| MILBANK, TWEED, HADLEY & MCCLOY 1 CHASE MANHATTAN PLAZA NEW YORK, NY 10005-1413 | | | | |
| | | | EXAMINER PECHHOLD, ALEXANDRA K | |
| | | | ART UNIT 3671 | PAPER NUMBER |

DATE MAILED: 11/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--|---|--|
| Office Action Summary | Application No. 10/726,839 | Applicant(s) GELFAND, MATTHEW | |
| | Examiner Alexandra K. Pechhold | Art Unit 3671 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26,29,30,67,70-72,74,82 and 91 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>filed 8/25/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 70 is objected to because of the following informalities: line 4 should have "to" before "an". Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 26, 29, 30, 67, 70, 71, 74, 82, and 91 are rejected under 35 U.S.C. 102(b) as being anticipated by Carr (WO 89/10302).**

Regarding claim 26, Carr discloses an energy absorbing system comprising:

- at least two energy absorbers (seen as restraining means 7) mechanically coupling a net (seen as net 1) and an anchor (seen as anchor 12);
- a support (seen as post 2) mechanically coupled to the net via a frangible connector (seen as breakaway 5); and
- a crossbar (seen as horizontal run 1c and webbing ends 11) mechanically coupling points of the at least two energy absorbers,

- wherein the frangible connector uncouples the support from the net upon application of at least a threshold force to the frangible connector (see page 2 second paragraph).

Regarding claim 29, Carr discloses an energy absorbing system comprising:

- an energy absorber (seen as restraining means 7) mechanically coupled to a net (see as net 1);
- a joint (seen as line 10) mechanically coupled to the energy absorber;
- a sleeve (seen as the loop around anchor 12) rotatably mechanically coupled to an anchor (seen as anchor 12) and mechanically coupled to the joint (see Fig. 1); and
- a support (seen as post 2) mechanically coupled to the net via a frangible connector (seen as breakaway 5); and
- wherein the frangible connector uncouples the support from the net upon application of at least a threshold force to the frangible connector (see page 2 second paragraph), and wherein the joint pivots on a horizontal axis (since the line 10 can pivot on a horizontal axis).

Regarding claim 30, Carr discloses an energy absorbing system comprising:

- two or more energy absorbers (seen as restraining means 7) mechanically coupled to a net (seen as net 1);
- two or more joints (seen as lines 10), each of the joints mechanically coupling at least one of the energy absorbers and an anchor (seen as anchors 12);

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- a crossbar (seen as horizontal run 1c and webbing ends 11) mechanically coupling points of the two or more joints; and
- a support (seen post 2) mechanically coupled to the net via a frangible connector (seen as breakaway 5);
- wherein the frangible connector uncouples the support from the net upon application of at least a threshold force to the frangible connector (see page 2 second paragraph), and wherein the joints pivot on a horizontal axis (since the lines 10 can pivot on a horizontal axis)..

Regarding claim 67, the method recited is inherent in the device of Carr as discussed with respect to claim 26 above.

Regarding claim 70, Carr discloses a method for absorbing the energy of an errant vehicle (see Abstract) comprising:

- positioning a net (seen as net 1) across an area through which the vehicle is expected to pass (as seen in Fig. 1), the net being mechanically coupled to an energy absorber (seen as restraining means 7), which is mechanically coupled to a joint (seen as line 10) which is mechanically coupled to a sleeve (seen as the loop around anchor 12), which is rotatably mechanically coupled to an anchor (seen as anchor 12); and
- mechanically coupling the net to a support (seen as post 2) through a frangible connector (seen as breakaway 5), wherein the frangible connector uncouples the support from the net upon application of at least a threshold force to the frangible connector by the vehicle and the force of

the vehicle is transferred through the net to the anchor (see page 2 second paragraph), and wherein the joints pivot on a horizontal axis (since the lines 10 can pivot on a horizontal axis).

Regarding claim 71, Carr discloses the method as discussed with respect to claim 70 above, and further discloses attaching a crossbar (seen as horizontal run 1c and webbing ends 11) mechanically coupling points of two or more joints (as seen in Fig. 1).

Regarding claim 74, Carr discloses an energy absorbing system comprising:

- means for absorbing energy (seen as restraining means 7);
- means for restraining a vehicle (seen as net 1), the restraining means being connected to the energy absorbing means to enable the transfer of energy from a vehicle impacting the restraining means to the energy absorbing means (see Fig. 1);
- means for pivoting the restraining means on a horizontal axis (since as the line 10 looped around the top of anchor 12 which allows for pivoting);
- means for supporting the restraining means (seen as post 2) in a position likely to be impacted by an errant vehicle until the application of at least a threshold force by the vehicle to the restraining means.

Regarding claim 82, Carr discloses an energy absorbing system comprising:

- two or more energy absorbers (seen as the two restraining means 7), mechanically coupling a net (seen as net 1) to an anchor (seen as anchor 12);

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- a crossbar (seen as horizontal run 1c and webbing ends 11) mechanically coupling points of the two energy absorbers arranged on the anchor; and
- a support (seen as post 2) mechanically coupled to the net;
- wherein the anchor and the support are arranged such that at least a portion of the net between the anchor and the support is substantially parallel to a likely direction of a vehicle to be stopped by the energy absorbing system (since the outermost ends of the net 1 and line 4 are substantially parallel to a likely direction of a vehicle to be stopped).

Regarding claim 91, Carr discloses an energy absorbing system comprising:

- a first anchor (seen as anchor 12) to which a first sleeve (seen as the line looped around the top of anchor 12) is rotatably mechanically coupled;
- a first energy absorber (seen as restraining means 7) mechanically coupling the first sleeve and net (seen as net 1);
- a second anchor (seen as anchor 12) to which a second sleeve (seen as the line looped around the top of anchor 12) is rotatably mechanically coupled;
- a second energy absorber (seen as restraining means 7) mechanically coupling the second sleeve and net (seen as net 1); and first and second supports (seen as posts 2), each mechanically coupled to the net,
- wherein the first anchor and the first support are arranged such that at least a portion of the net between the first anchor and the first support is substantially parallel to a likely direction of a vehicle to be stopped by the

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energy absorbing system (since the outermost ends of the net 1 and line 4 are substantially parallel to a likely direction of a vehicle to be stopped),

- wherein the first and second energy absorbers are arranged in a direction not substantially perpendicular to a likely direction of a vehicle to be stopped by the system (as seen in Fig. 1), and
- wherein the first sleeve rotates about an axis of the first anchor when a force is applied to the net (since the loop around the top of anchor 12 can rotate).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claim 72 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carr (WO 89/10302) in view of Ousterhout et al (US 6,312,188).**

Carr discloses the limitations of the claimed invention as discussed with respect to claims 70 and 71 above. Carr fails to disclose the step of changing the height of a support, thereby changing the height of the net. Ousterhout teaches supports (14, 16) that are telescoping, and therefore may be raised or lowered. It would have been obvious to one having ordinary skill in the art at the time the invention was made to

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modify the support of Carr so that the height can be changed as taught by Ousterhout, since Ousterhout states in column 5, lines 59-60 that the barrier is deployed by extending the telescoping supports upwardly, therefore allowing the device to be raised and lowered into active and inactive positions.

Response to Arguments

6. Applicant's arguments filed 8/25/05 have been considered but are moot in view of the new grounds of rejection. The applicant's Amendment filed 8/25/05 incorporates the allowable subject matter into independent claims, to put the application in condition for allowance. But the applicant filed an IDS on 8/25/05 with the response, and the Examiner is applying a reference cited on this IDS. Accordingly, this Office Action is made final since the Examiner is applying art on the newly submitted IDS.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexandra Pechhold whose telephone number is (571) 272-6994. The examiner can normally be reached on Mon-Thurs. from 8:00am to 5:30pm and alternating Fridays from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (571) 272-6998. The fax phone number for this Group is (703) 872-9306.



Thomas B. Will
Supervisory Patent Examiner
Group 3600

AKP
11/8/05